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JOHN J. COTA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN J. COTA,

Defendant.

Case No. CR 08-0160 SI

**AFFIDAVIT IN SUPPORT EX PARTE
MOTION FOR AN ORDER (1)
VACATING CURRENT DEPOSITION
DATES AND THEN (2) EITHER
REFERRING MOTION TO VACATE
OR CONTINUE RULE 15
DEPOSITIONS TO MAGISTRATE
JUDGE SPERO OR, ALTERNATIVELY,
SHORTENING TIME ON MOTION**

I, Jeffrey L. Bornstein, declare as follows:

1. I am an attorney at K&L Gates licensed to practice law in the State of California and am one of the attorneys representing Captain John Cota in this case. I have personal knowledge of those matters stated herein and could and would competently testify thereto.

1.

AFFIDAVIT IN SUPPORT EX PARTE MOTION FOR AN ORDER (1) VACATING
CURRENT DEPOSITION DATES AND THEN (2) EITHER REFERRING MOTION TO
VACATE OR CONTINUE RULE 15 DEPOSITIONS TO MAGISTRATE JUDGE SPERO
OR, ALTERNATIVELY, SHORTENING TIME ON MOTION - CR 08-0160 SI

1 2. Magistrate Judge Spero has ordered that Rule 15 Depositions of three Cosco
2 Busan crew members begin on July 21, 2008. The remaining three crewmembers are scheduled
3 to be deposed beginning on August 11, 2008.

4 3. On July 3, 2008, the government produced new discovery indicating that certain
5 Cosco Busan crew members created and produced false documents. The new discovery also
6 includes computer hard drives (produced in late June) that need to be analyzed in light of this
7 new information. Given the new information, we cannot take meaningful depositions under the
8 current schedule.

9 4. We intend to file a motion to vacate the crew member depositions and have the
10 witnesses produced at trial or, in the alternative, to continue the depositions (the "Motion to
11 Vacate or Continue Depositions"). We are requesting, by this ex parte motion, that this Court
12 first vacate the current deposition dates and then either (i) refer the Motion to Vacate or Continue
13 Depositions to Magistrate Judge Spero for determination by July 21, 2008, or (ii) order that the
14 Motion to Vacate or Continue Depositions be heard by this Court on shortened notice. Such
15 relief is needed due to the volume of new and important discovery we just received and the
16 rapidly approaching deposition dates.

17 5. If this Court is inclined to hear the matter on shortened notice, rather than refer
18 the matter to Magistrate Judge Spero, we would recommend that it be heard on July 18, 2008 –
19 the same date Defendant's motions to dismiss are to be heard – or shortly thereafter.

20 6. On July 8, 2008, I called AUSA Jonathan Schmidt and requested that he stipulate
21 to an Order Shortening Time so that this matter could be considered by this Court on July 18,
22 2008 or referred to Magistrate Judge Spero for his consideration prior to July 21, 2008. AUSA
23 Schmidt indicated he had no objection to this request or the underlying Motion to Vacate or
24 Continue the currently scheduled depositions.

25 7. On July 8, 2008, I left a message for Jonathan Howden, counsel for the three crew
26 members whose depositions were scheduled to begin on July 21, 2008 and told him that we
27

1 would be filing the Motion to Continue or Vacate Depositions on a shortened time basis. I have
2 not yet received a return telephone call. Based on Mr. Howden's outgoing message, it appears
3 he may be out of town.

4 I declare under penalty of perjury that the foregoing is true and correct to the best of my
5 knowledge.

6
7 Dated: July 9, 2008

By: /s/ Jeffrey L. Bornstein
Jeffrey L. Bornstein, Esq.

PROOF OF SERVICE

I am employed in the County of San Francisco, State of California by a member of the Bar of this Court, at whose direction this service was made. I am over the age of 18 and not a party to the within action. My business address is 55 Second Street, Suite 1700, San Francisco, CA 94105. On July 9, 2008, I served the document(s) described as:

AFFIDAVIT IN SUPPORT EX PARTE MOTION FOR AN ORDER (1) VACATING CURRENT DEPOSITION DATES AND THEN (2) EITHER REFERRING MOTION TO VACATE OR CONTINUE RULE 15 DEPOSITIONS TO MAGISTRATE JUDGE SPERO OR, ALTERNATIVELY, SHORTENING TIME ON MOTION

on the parties to this action named on the attached service list by the method described below.

(BY PERSONAL SERVICE) I caused a true and correct copy of said document(s) to be served by hand to the addressee(s) listed above, with the name and address of the person served shown on the envelope.

(BY OVERNIGHT DELIVERY) I enclosed a true and correct copy of said document(s) in an envelope/package provided by an overnight delivery carrier addressed to the addressee(s) listed above, sealed it, and placed it for collection and overnight delivery following the ordinary business practices of Kirkpatrick & Lockhart Preston Gates Ellis LLP. I am readily familiar with the firm's practice of collecting and processing correspondence for overnight delivery. On the same day that correspondence is placed for collection and overnight delivery, it is collected by an overnight delivery carrier. Delivery fees are pre-paid or provided for in accordance with the ordinary business practices of Kirkpatrick & Lockhart Preston Gates Ellis LLP.

(BY ELECTRONIC TRANSMISSION) I transmitted a true and correct copy of said document(s) by electronic mail to the offices of the addressee(s). I did not receive, within a reasonable time after the transmission, any message or other indication that the transmission was unsuccessful.

X (BY FACSIMILE) I transmitted a true and correct copy of said document(s) by facsimile to the offices of the addressee(s). Upon completion of the facsimile transmission, a transmission report was issued showing the transmission was complete and without error.

(BY U.S. MAIL) I enclosed a true and correct copy of said document(s) in an envelope addressed to the addressee(s) listed above and placed it for collection and mailing following the ordinary business practices of Kirkpatrick & Lockhart Preston Gates Ellis LLP. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service with postage fully prepaid at San Francisco, California.

Executed on July 9, 2008 at San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Mae A. Chu
Mae A. Chu

SERVICE LIST

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